IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11251 of 2000
with
CIVIL APPLICATION No 10437 of 2000
and
SPECIAL CIVIL APPLICATION No 11252 of 2000
with
CIVIL APPLICATION No 10436 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GANDHIDHAM MERCANTILE COOP BANK LTD
Versus
NARSINHBHAI ATMARAM AGRAWAL

Appearance:
MR SK JHAVERI with MR KS JHAVERI for Petitioner No. 1-2
MR KG VAKHARI with MR SHIRISH JOSHI for Respondents

CORAM : MR.JUSTICE M.S.SHAH
Date of decision: 03/08/2001

COMMON CAV JUDGEMENT

With the consent of the learned counsel for the parties, the petitions were taken up for final disposal and are being disposed of by this common judgment.

2. In these petitions purporting to be under Article 226 but in substance under Article 227 of the Constitution, the petitioners have prayed for a writ of certiorari for quashing and setting aside the common judgment and order dated 12.10.2000 passed by the Gujarat State Cooperative Tribunal (hereinafter referred to as `the Tribunal') in the stay applications in Revision Application Nos. 241 and 245 of 2000 by which the Tribunal has directed the petitioners herein i.e. Gandhidham Mercantile Cooperative Bank Ltd. (hereinafter referred to as 'the Bank') and its Election Officer to accept the nomination papers of the respondents herein, two in number, and also directed the petitioners to conduct the elections to the Board of Directors by rescheduling the remaining stages of the election program after allowing the respondents herein to participate as contesting candidates in the process of election.

3. After the aforesaid judgment and order was pronounced, at the request of the petitioners, the Tribunal suspended the operation of the said order till 31.10.2000. While issuing notice in the present petitions, this Court stayed the operation of the impugned order by extending the suspension order passed by the Tribunal.

4. The facts leading to filing of these petitions, briefly stated, are as under :-

4.1 Petitioner No.1-Gandhidham Mercantile Cooperative The Bank is a Co-operative Society registered under the Gujarat State Cooperative Societies Act, 1961 (hereinafter referred to as `the Act'). The program for elections to the Board of Directors of the Bank was declared as under :-

16.8.2000	Publishing on the notice board the list of members.
21.8.2000	Last date for making corrections in the list of members.
26.8.2000	For issuing nomination forms (during office hours)
29.8.2000	Last date for submitting nomination forms (upto 7.00 P.M.)
30.8.2000	For scrutiny of nomination forms and for declaration the result of

the scrutiny (upto 5.00 P.M.)

01.9.2000 For withdrawal of nomination forms (upto 3.00 P.M.)

01.9.2000 For publishing the final list of contesting candidates (at 5.00 P.M.)

10.9.2000 Polling (from 8.00 A.M. to 3.00 P.M.) for five vacancies on account of retirement.

4.2 Between 26th and 29th August, 2000 (both the days inclusive), 15 nomination forms were issued including the forms issued to the respondent in each of these petitions. Out of them, 14 persons including the respondents filed their nomination forms within the stipulated time limit. The respondents herein submitted their nomination forms on 29.8.2000. The Election Officer, petitioner No.2 herein, circulated notice dated 29.8.2000 that as per the previously published election program, scrutiny of the nomination forms will take place on 30.8.2000 at 3.00 P.M. in the bank's office and that it was open to the candidates to remain present at the time of scrutiny. The said circular notice was served on all the candidates including the respondents herein. Neither of the respondents, however, remained present at the time of scrutiny. On scrutiny, the Election Officer held that neither of the respondents was eligible for contesting the elections as per the bank's bye-laws and Rule 12(b), which reads as under :-

"DISQUALIFICATION FOR THE POST OF DIRECTOR :

A person shall not be qualified to be elected and shall not continue as a Director if,

12(b) The candidate himself is or becomes defaulter in payment of the loan taken by him from the Bank, any time throughout the preceding year or current year."

The respondents were informed accordingly by the Election Officer by separate letters dated 30.8.2000 and the Election Officer also published the list of eligible candidates on the same day. The respondents submitted letters dated 31.8.2000 contending that the respondents were eligible under the Election Rules including Rule

12(b) and the respondents demanded detailed explanation for the rejection of their nomination forms. The respondents also stated that till date the Bank had never served any kind of notice wherein the respondents were treated as defaulters. The respondents accordingly requested for withdrawal of the letters dated 30.8.2000 and insisted that they be treated as eligible candidates. On 1.9.2000, the Election Officer wrote letters to the respondents stating that the respondents had obtained vehicle loans from the petitioner-bank and that the respondents were in arrears in repaying the same and, therefore, ineligible under Election Rule 12(b). The Election Officer also stated that as per the election program, the scrutiny of the nomination papers had taken place after prior intimation to the respondents, but the respondents had not remained present at the time of scrutiny.

Thereafter, out of the 10 eligible candidates, 4 candidates withdrew their nomination papers leaving in the fray 6 eligible candidates. The list of the said contesting eligible candidates was published by the Election Officer on 1.9.2000.

4.3 Aggrieved by the above decision of the Election Officer, the respondents herein filed Arbitration Suit Nos. 56 and 57 of 2000 before the Board of Nominees at Rajkot. The respondents prayed therein that the decision of the Election Officer rejecting the nomination forms of the respondents herein under election Rule 12(b) was illegal and void and the respondents contended that the respondents were not defaulters. The respondents also prayed for a permanent injunction to restrain the bank and the Election Officer from holding elections to the Board of Directors without accepting the nomination forms of the respondents. The suits were filed on 4.9.2000 and the respondents also filed interim injunction applications (Exh. 4 in each suit) to restrain the Bank and the Election Officer from holding elections to the Board of Directors without the candidature of the respondents. The petitioners herein submitted their written statement dated 6.9.2000 to the suits and also submitted their objections to the interim injunction applications on the same day. The petitioners (the defendants in the suits) also produced the documents regarding the loan transactions between the bank and the respondents and the respective loan accounts of the respondents. After hearing the parties, the Board of Nominees, Rajkot dismissed the interim injunction applications (Exh. 4 in each suit) and fixed 3.10.2001 for proceeding further with the suits.

4.4 The respondents carried the matter before the Tribunal and prayed for interim injunction. The revision applications and the interlocutory applications were filed before the Tribunal on 9.9.2000. The respondents prayed for the following interim reliefs during pendency of the revision applications :-

(a) The opponent (the Election Officer) be restrained from proceeding further with the election program to the Board of Directors.

(b) The opponent (the Election Officer) be directed to accept the nomination papers of the applicants (the respondents herein) and include their names in the list of eligible candidates.

By ad-interim order dated 9.9.2000, the learned single Member of the Tribunal issued notice and granted the ad-interim relief in terms of prayer (a), as quoted above. After bi-parte hearing, the Tribunal passed the common judgment and order dated 12.10.2000 directing the Bank and the Election Officer to accept the nomination forms of the respondents herein as valid, to include their names in the list of eligible contesting candidates and to hold elections within one month by rescheduling the election program.

It is against the aforesaid judgment and order that the Bank and the Election Officer have filed the present petitions.

5. As indicated above, while issuing notice, this Court granted ad-interim stay of the operation of the orders of the Tribunal with the result that the elections to the Board of Directors of the petitioner-Bank have not been held so far.

The respondents herein filed Civil Applications for vacating the ad-interim stay granted by this Court. This Court, therefore, thought it fit to take up both the petitions for final disposal. The record and proceedings were called for from the Board of Nominees and the Tribunal. The learned counsel for the parties have been heard at length and the petitions are accordingly being finally disposed of by this common judgment.

6. At the hearing of these petitions, Mr SK Jhaveri, learned senior counsel for the Bank and the Election

Officer has made the following submissions :-

(i) The Tribunal has committed errors apparent on the face of the record in interfering with the election process by directing the Election Officer to accept the nomination forms of the respondents whose candidature were found to be invalid. As per the settled legal position, in such election disputes the Courts or the quasi-judicial bodies are not to interfere and the aggrieved party is to have his remedy by challenging the elections after the results are declared.

(ii) The impugned orders of the Tribunal at the interlocutory stage amount to allowing not only the revision applications, but also the suits filed by the respondents herein. The suits against the decision of the Election Officer were also not maintainable for want of necessary parties, namely the other contesting candidates whose nomination papers were accepted.

(iii) The Tribunal erred in sitting in appeal over the decision of the Election Officer. Even on merits, the Election Officer was justified in holding the respondents to be defaulters.

7. On the other hand, Mr KG Vakharia with Mr Shirish Joshi, learned counsel for the respondents have vehemently opposed the petitions and submitted as under:-

(i) These petitions under Article 227 of the Constitution challenge the interlocutory orders passed by the Tribunal in the revision applications still pending before the Tribunal and, therefore, this Court may not interfere with such interlocutory orders.

(ii) The suits before the Board of Nominees were very much maintainable as only the Bank and the Election Officer were the necessary parties and the contesting candidates were not necessary parties.

(iii) The respondents were erroneously held by the Election Officer to be defaulters without the Bank ever having issued any notice to the respondents. The respondents were not in arrears on the date of filing nomination papers and, therefore, the Tribunal was fully justified in

giving the impugned directions instead of allowing the illegal election process to go on and then requiring the respondents to challenge the election after the results are declared. The intervention by the Tribunal was justified in the facts and circumstances of the case for furthering the object of the elections.

8. Having heard the learned counsel for the parties, while this Court is not inclined to hold that the suits for challenging the decision of the Election Officer rejecting the nomination papers of the respondent-plaintiffs were not maintainable at all and without expressing any opinion on the question whether the suits were liable to be dismissed for non-joinder of the eligible candidates whose nomination papers were accepted by the Election Officer, this Court is inclined to accept the submissions made on behalf of the petitioner-bank and the Election Officer that the Tribunal was not justified in interfering with the election process at this stage when the Election Officer had held the respondents to be ineligible on account of being in arrears in respect of the loans taken by the respondents from the petitioner-bank.

9. In Election Commission of India vs. Ashok Kumar, (2000) 8 SCC 216, the Apex Court has laid down the following principles in the context of the controversy as to when the Courts can or should interfere with the election process :-

"(1) In an election, (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interruption, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or order issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievably by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

(5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the Court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material."

Of course, the Apex Court has further added that the aforesaid conclusions should not be construed as a summary of the judgment and that the conclusions have to be read along with the earlier part of the judgment wherein the conclusions have been elaborately stated with reasons. In particular, the Apex Court has sounded the following caution in para 28 of the judgment :-

"28. Election disputes are not just private civil disputes between two parties. Though there

is an individual or a few individuals arrayed as parties before the Court but the stakes of the constituency as a whole are on trial, whichever way the lis terminates it affects the fate of the constituency and the citizens generally. A conscientious approach with overriding consideration for welfare of the constituency and strengthening the democracy is called for. Neither turning a blind eye to the controversies which have arisen nor assuming a role of overenthusiastic activist would do. The two extremes have to be avoided in dealing with election disputes."

10. Bearing the aforesaid principles and the caution in mind, the Court has considered the rival submissions. The real controversy between the parties is whether the Election Officer was justified in deciding that the respondents were disqualified under Rule 12(b) of the Election Rules. For the sake of convenience, the said Rule is again quoted hereinbelow.

"DISQUALIFICATION FOR THE POST OF DIRECTOR :

A person shall not be qualified to be elected and shall not continue as a Director if,

12(b) The candidate himself is or becomes defaulter in payment of the loan taken by him from the Bank, any time throughout the preceding year or current year."

11. Coming to the facts of Special Civil Application No. 11251 of 2000 -

11.1 the respondent (Narsinhbhai Atmaram Agrawal) was granted by the petitioner-bank a loan of Rs.6,90,000/-for the purpose of buying Toyota Qualis Car. The loan amount was to be repaid in 36 equal monthly instalments of Rs.20,000/- each and the repayment was to be concluded before 30.6.2003. The bank's case is that since the respondent did not pay the instalment due on 30.7.2000 and since the only payment made in the month of August was Rs.10,000/-, the respondent was in arrears and was rightly treated as a defaulter. The respondent had paid only Rs.10,000/- out of the aggregate amount of Rs.40,000/(instalments for July and August, 2000) payable by him by 30.8.2000.

11.2 The Board of Nominees held that the Election

Officer was justified in giving the above finding. It held that the loan agreement between the parties did not provide for any moratorium and that the expression `moratorium' used in the Bank statement was not to be found anywhere in the loan papers. The respondent was liable to pay Rs.20,000/- in July, 2000 and another Rs.20,000/- in August, 2000 i.e. Rs.40,000/in the aggregate by the time the nomination papers were filed, but since only Rs.10,000/- was paid by the respondent, he was disqualified under Rule 12(b).

11.3 The Tribunal, however, accepted the argument of the respondent (the petitioner before the Tribunal) and gave a finding that as per the computerised statement issued by the Bank the respondent was given one month's moratorium, the loan was disbursed on 30.6.2000 and, therefore, no instalment was due and payable till 30.7.2000. The Tribunal further held that of course the first instalment was due after completion of the month of August, 2000, and that, therefore, the statement of account as per the record of the bank is not reflecting any default for instalment. The Tribunal held that both the Election Officer as well as per the Board of Nominees had come to the erroneous conclusion on account of disregard of the condition of moratorium in the computerised statement of account.

12. Mr Jhaveri has vehemently submitted that the loan agreement did not provide for any moratorium period of one month, the loan agreement specifically provided that the loan was repayable in 36 equal monthly instalments of Rs.20,000/- each and the first instalment became payable on 10.7.2000 and the second instalment became due on 10.8.2000.

13. On the other hand, Mr Vakharia submitted that the computerised statement issued by the bank itself shows that there was moratorium period of one month as the loan was repayable in 36 instalments of Rs.20,000/- each. Since the loan disbursed was Rs.6,90,000/-, equated monthly instalment of Rs.20,000/- was required to be paid only in 35 instalments i.e. one instalment of Rs.10,000/and 34 instalments of Rs.20,000/- each. Hence, 10.8.2000 was the was the due date for instalment of Rs.10,000/- and thereafter monthly instalments of Rs.20,000/- were to be paid. Mr Vakharia further added that the respondent had deposits of more than the loan amount with the petitioner-bank on the long term basis including on the date of filing nomination forms and the date of scrutiny and that in any view of the matter, the respondent repaid the entire loan amount in the month of

September, 2000 and, therefore also, the bank and the Election Officer were acting arbitrarily and unreasonably in holding the respondent to be a defaulter.

14. Having heard the learned counsel for the parties, It is necessary to note that the agreement provided that the respondent was granted loan of Rs.6,90,000/- at interest rate of 15.75% p.a. and that the amount was required to be repaid as under :-

"(11) The said loan of Rs.6,90,000-00 shall be repayable by the Borrower/s by monthly instalments each of Rs.20,000-00 paid on or before 10th of every month and so on till entire amount of the said loan of Rs.6,90,000-00 is repaid in full with all interests, costs, charges, expense etc. whatsoever and the Borrower/s shall in the meantime in addition to the said instalments pay interest at the @ 15.75% p.a. or at such other rate or rates as may time and from time to time be notified by the Bank.

(12) Notwithstanding anything herein contained or in any other documents or writing the whole of the said loan of Rs.6,90,000-00 shall at the Bank's option become forthwith due and payable by the borrower/s to the Bank and the Bank will at its option be entitled to enforce its security upon the happening of any of the following events namely;

(a) Any instalments of the principal moneys of the said loan unpaid upon the due date for repayment thereof.

(b) Any interest remaining unpaid and in arrears for a space of three months after the same shall have become due whether demanded or not.

(c) to (j) ... ...

(13) On the question whether any of the above events has happened decision of the Bank shall be conclusive and binding on the borrower/s."

(emphasis supplied)

The loan papers on record (Mark 13/14) further

give the following particulars :-

Nature of Loan : Vehicle
Purpose of Loan : Toyota Qualis Vehicle
Loan/Advance Amount: 6,90,000/-
Period : 36 months
Rate of Interest : 15.75%
Monthly Instalment : 20,000/-
Resolution No. 12/2000 Date: 29.6.2000
A/c Opening Date : 30.6.2000
Maturity Date : 30.6.2003

The bank statement in question (Mark 13/9) reads as under :-

Statement of account for 01/04/1999 to 30/08/2000 (LA)

Account Number : VHL0000604 Mem.Type/No. : P/2558
Status : Operative
Name : Narsinghbhai A. Agrawal
Sanction Date : 29.06.2000
Sanction Amount: 6,90,000/-
Disbursed Date : 30.06.2000
Disbursed Amount: 6,90,000/-
Rate of Interest: 15.75
Install. Amt. : 20,000/-
No. of Install. : 0036
Address : Krishna Auto Centre
Gandhidham
Telephone No. 39712
Moratorium Months 01

Sr. No.	Date	Particulars	Debit Amount	Credit Amount	Cl.Balance
	01.04.99	BAL B/F	*0.00		0.00 D
0001	30.06.00	By TRF C 96		*79125.00	*79125.00 C
0002	30.06.00	TO TRF DD S	*769125.00		*690000.00 D
0003	01.07.00	To interest	*298.00		*690298.00 D
0004	25.08.00	By TRF C 96		*298.00	*689702.00 D
0005	25.08.00	By TRF C 96		*9702.00	*680298.00 D
Totals :			*769423.00	*89125.00	*680298.00 D

20000 x 2	6,90,000/-	6,80,298/-
---------	40,000/-	6,50,000/-
40,000/-	----------	----------
	6,50,000/-	30,298/-
		Overdue

From the perusal of the aforesaid documents on record, while the Bank statement itself indicated moratorium period of one month, it only meant that the first instalment was not payable till 30.7.2000. However, in any view of the matter, the first instalment of Rs.20,000/-was due and payable on 10.8.2000 as per the aforesaid clause (11) of the agreement. But, till the date of filing the nomination forms, the respondent had admittedly paid only Rs.10,000/-. Hence, there is substance in the contention urged by Mr Jhaveri for the Bank that the respondent was in arrears in respect of the aforesaid loan amount.

15. Assuming that the view canvassed by the respondent-plaintiff was a possible view that the first instalment became due and payable on 30.8.2000 and that the nomination papers were filed on 29.8.2000 and, therefore, he was not in arrears, even then it was at the highest one of the two possible views, but for that reason the decision of the Election Officer holding the respondent to be in arrears of the bank dues on the date of scrutiny on 30.8.2000 cannot at all be castigated as mala fide or arbitrary nor can it be said that the Election Officer had acted in breach of law. The contention that the Bank had not issued any notice to the respondent holding him to be a defaulter is misconceived. Such a notice was required to be issued by the Bank if the Bank were to invoke its power under clause (12) of the agreement for recalling the entire loan. Since it is not the case of the Bank that the Bank had recalled the loan, the question of the Bank being required to exercise any option or to issue any notice to the respondent under clause (12) of the agreement did not arise. In this view of the matter, this Court is of the view that the Tribunal was not justified in interfering with the decision of the Election Officer at this stage when the decision of the Election Officer cannot be said to be mala fide, arbitrary or in breach of the law.

16. Coming to the facts in Special Civil Application No. 11252 of 2000 -

16.1 The respondent herein had taken a loan of Rs. 4,00,000/- for purchasing two vehicles. The loan was disbursed on 20.9.1999. The monthly instalment was Rs.17,500/- and the entire loan was required to be repaid by August, 2000. However, the respondent was desirous of selling off one of the two vehicles and, therefore, the respondent requested the Bank to cancel the hypothecation agreement in respect of vehicle No. GJ-12U-8050.

Accordingly by letter dated 24.4.2000, the Loan Officer of the Bank informed the respondent as under:-

"With reference to your letter dated 24.4.2000 for the above stated subject, we release one vehicle No. GJ-12-U-8050, from the Loan A/c. No. VHL-426, as Rs.1,70,000/-, payment has been made against it.

Now, the outstanding amount in the vehicle loan A/c. No. 426, against vehicle No. GJ-12-U-8051 is Rs.1,51,371-00 and now onwards the instalment per month to be paid is Rs.8,750/-. Kindly be noted."

However, from 24.4.2000 till the date of scrutiny on 30.8.2000, the respondent did not repay any amount to the Bank against the loan for vehicle No. GJ-12U-8051. The Bank and the Election Officer, therefore, held the respondent to be in arrears.

16.2 The Board of Nominees did not find any facult with the above finding. However, the Tribunal took a different view in the following words :-

"8. The applicant in Revision Application No. 245/2000 is disbursed the loan on 20-9-99 and after one month moratorium i.e. 20-10-99 instalments starts and 10 instalments of Rs.17500 each are due up to August, 2000. On the dat eof scrutiny 10 x 17500 = 175000 are due as the instalments and the interest debited in the statement of account is 50426. Therefore intalments together with interest due amounts to Rs.2,25,425/- whereas Rs.2,72,560/- are paid as per the computerised statement of accounts of the bank which only relates over payment of Rs.47,134/- instead of overdue default. As per the submission of opponent bank supported by the record one out of the vehicle is released from the account on payment of Rs.17000/- and therefore considering loan of one vehcile the account is a defualter but the account is not segregated or rescheduled for the vehicle and therefore at this stage in absence of notice of default cannot be held against the applicants."

17. Mr Jhaveri for the Bank has submitted that since the respondent did not pay any amount between 24.4.2000 and 30.8.2000 against vehicle No. GJ-12-U-8051, the respondent was a defaulter.

On the other hand, Mr Vakharia for the respondent submitted that there was only one loan account for Rs.4,00,000/- and there were no separate accounts for the two vehicles. The aggregate amount of instalments together with interest due and payable under the said loan agreement upto August, 2000 was Rs.2,25,445/- whereas the respondent had paid Rs.2,72,560/- by that time. Hence, far from any arrears, the respondent had over paid Rs.47,134/-.

18. Having heard the learned counsel for the parties, it is clear that the Tribunal erred in not considering that the loan under Account No. 426 was given for purchasing two vehicles and that at the request of the respondent, the Bank had released vehicle No. GJ-12-U-8050 from the loan account when the respondent paid Rs.1,70,000/- against the said vehicle on 24.4.2000. Hence, after 24.4.2000, the outstanding amount in the vehicle loan Account No. 426 (against vehicle No. GJ-12-U-8051) was Rs.1,51,371/- and from 24.4.2000 onwards the respondent was required to pay the monthly instalments of Rs.8,750/- (instead of monthly instalment of Rs.17,500/- as per the loan agreement for two vehicles). However, the respondent failed to pay any instalment between 24.6.2000 and 30.8.2000. Hence, the decision of the Election Officer holding the respondent as in arrears was justified. Even then, the Tribunal interfered with the said decision by observing that far from any arrears, the respondent had made over payment. The respondent had merely repaid the loan amount against vehicle No. GJ-12-U-8050 in order to get the hypothecation agreement terminated in respect of that vehicle. Hence, the loan amount remained to be paid only for one vehicle for which the loan instalment was half of Rs.17,500/- i.e. Rs.8,750/-. By ignoring this factual aspect, the Tribunal committed an error apparent on the face of the record and that too by interfering with the decision of the Election Officer holding the respondent as ineligible for contesting elections.

19. As regards the decision in Ramchandra B. Desai vs. Gulabbhai K. Desai, 1996(1) GLR 586, it is true that in the aforesaid decision, this Court has held that in matters of elections to the Cooperative societies other than the specified/apex societies, there is no election tribunal which is specially constituted to entertain the disputes touching the elections to primary societies. Hence, the suit to challenge any decision of the Election Officer at the intermediate stage is maintainable. Mr Vakharia, learned counsel for the

respondents vehemently contended that the petitioner society is not a specified/apex society and is a primary society and, therefore, the aforesaid principle is clearly applicable.

It is true that the controversy is for contesting elections to the Board of Directors of a primary society and, therefore, the suits filed by the respondent-plaintiffs were maintainable. However, that did not mean that the Tribunal could have sat in appeal over the decision of the Election Officer on the question whether the nomination forms were rightly rejected or wrongly rejected. The Tribunal could not have interfered when the decision of the Election officer was not arbitrary, mala fide or in breach of law.

In fact, in the aforesaid decision, the learned Single Judge of this Court has clearly held that "only in a fit case where the (election) dispute is neat and transparent, it would be expedient to decide the controversy expeditiously".

20. In the facts of the instant case, applying the test laid down in the above decision, it cannot be said that the dispute between the parties was so neat and transparent that the Tribunal should have interfered with the election process at this stage. On the contrary, this Court has found that the decision of the Election Officer cannot be said to be perverse or arbitrary, malafide or in breach of law. As per the loan agreement between the parties, the respondent in Special Civil Application No. 11251 of 2000 was liable to pay atleast one monthly instalment of Rs.20,000/- by 10.8.2000. But by 30.8.2000, the respondent had paid only Rs.10,000/-. Similarly, the respondent in Special Civil Application No. 11252 of 2000 had not paid any amount towards his loan account between 24.4.2000 and 30.4.2000.

21. Mr Vakharia and Mr Joshi for the respondents very tenaciously submitted that in view of the respondents having Fixed Deposits of substantial amounts with the Bank, and the respondent having cleared all the dues of the Bank in September, 2000, this Court may not interfere with the impugned judgment of the Tribunal.

The Court, however, does not accept the above submission. The object underlying Rule 12(b) is very clear. Those who aspire to manage the affairs of the Bank are first expected to clear their outstanding dues before filing the nomination forms. When the election program is notified, it is for the prospective candidates

to inquire from the Bank whether they are in arrears. It is not for the Bank to give them any notice of default. Similarly, payments made after the relevant date cannot cure the defect in filing the nomination forms. For this reason also, there is no justification for sustaining the order passed by the Tribunal.

22. As regards the contention that this Court should not interfere with the interlocutory order of the Tribunal in a petition under Article 227 of the Constitution, interference by the Tribunal in the midst of the election process was in clear disregard of the settled legal principles. The Tribunal's sitting in appeal over the decision of the Election Officer was also absolutely uncalled for. Hence, this Court is required to exercise its jurisdiction under Article 227 of the Constitution for setting aside the judgment and order of the Tribunal. Though the Tribunal's order was, technically speaking, at the interlocutory stage, the impugned order of the Tribunal has for all practical purposes decreed the suits. Hence, it cannot be treated as an interlocutory order.

ORDER

23. In view of the above discussion, the petitions are allowed. The impugned judgment and order dated 12.10.2000 passed by the Gujarat State Cooperative Tribunal in the stay applications in Revision Application Nos. 241 and 245 of 2000 are quashed and set aside. The petitioners shall accordingly be at liberty to proceed with the elections to the Board of Directors of the petitioner-Bank in accordance with the rescheduled election program which shall be published hereafter. The petitioners may proceed to hold the elections to the Board of Directors of the petitioner-Bank on the basis of the list of eligible candidates as notified by the Election Officer on 1.9.2000.

24. Rule in each petition is made absolute to the aforesaid extent with no order as to costs.

25. Since the petitions are allowed, the Civil Applications for vacating the interim stay do not survive and are hereby dismissed.

The record and proceedings be returned to the Board of Nominees and the Tribunal.

(M.S. Shah, J.)

At this stage Mr Shirish Joshi, learned counsel for the respondents requests that the operation of this order may be stayed for sometime in order to enable the respondents to have further recourse in accordance with law.

Mr SK Jhaveri, learned counsel for the petitioners states that the petitioners are not going to declare the rescheduled election program till 13.8.2001.

In view of the above statement coming from the learned counsel for the petitioners, the request made by Mr Shirish Joshi is not required to be granted.

August 3, 2001 (M.S. Shah, J.)

sundar/-